
(2013) 11 CHH CK 0020
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 912 of 2012

Md. Aslam Chouhan and Others

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : AIR 2014 Chh 1 : (2014) 1 MPHT 104

Hon'ble Judges : Yatindra Singh, C.J; Manindra Mohan Shrivastava, J

Bench : Division Bench

Advocate : Jitendra Gupta, in Writ Petition C No. 912 of 2012 and Mr. Ashish Surana, in Writ Petition C No. 947 of 2013, for the Appellant; Kishore Bhaduri, Additional Advocate General for the State, for the Respondent

Final Decision : Disposed Off

Judgement

1. The only question involved in these writ petitions is, about validity of sub-sections (2) and (3) of Section {6(6)(2) and 6(3)} of the Chhattisgarh Agriculture Cattle Preservation Act, 2004 (the 2004-Act).

THE FACTS

The Petitioners are carrying on business of transportation. Their vehicles have been seized u/s 6(2) of the 2004-Act and their applications for their release have been rejected by the magistrate concerned u/s 6(3) of the 2004-Act.

bull& In writ Petition (C)-912 of 2012, there are five Petitioners. The vehicle number CG-07-LJ-3786 of Petitioner-1 namely, CG-07-LJ-3786 was transporting agriculture cattle on 14.04.2012. It was seized on the same day. Thereafter, his application to release the vehicle was rejected on 25.04.2012;

bull& In Writ Petition (C)-947 of 2013, the Petitioner is the registered owner of vehicle-CG-15-AC-0951. The vehicle was carrying agriculture cattle on 01.05.2013. It was seized on the same day. Thereafter, her application to release the vehicle was rejected on 06.05.2013.

2. The Petitioners have filed the present writ petitions challenging validity of sections 6(2) and 6(3) of the 2004-Act.

POINTS FOR DETERMINATION

3. We have heard counsel for the parties. The following points arise for determination:

(i) Whether the impugned sub-sections are violative of Article 19(1)(g) of the Constitution of India;

(ii) Whether the impugned sub-sections are hit by Article 254 of the Constitution being inconsistent with the provisions of The Prevention of Cruelty to Animals Act, 1960 (the 1960-Act) and sections 451 of the Code of Criminal Procedure (Cr.P.C.);

(iii) Whether the impugned sub-sections are violative of article 301 of the Constitution.

1st POINT:NOT UNREASONABLE

Submissions of the parties

4. The counsel for the Petitioners placed reliance on Chintaman Rao Vs. The State of Madhya Pradesh, , Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another, and N.K. Bajpai Vs. Union of India (UOI) and Another, and submit that:

The Petitioners are the owners of the vehicles and they are merely using them for transportation business;

The agriculture cattle were not being carried for slaughter or at least, the Petitioners had no knowledge that they were being transported in contravention of the 2004-Act;

By not releasing the vehicles of the Petitioners for six months, their entire business has come to a halt and it is an unreasonable restriction.

5. The Additional Advocate General for the State submits that:

Agriculture cattle are transported for sale or are returned after purchasing from a market, they are also transported for medical purposes or when they are shifted to another place for keeping--otherwise, there is no justification to transport them from one place to other and in case they are otherwise transported, then, it is for slaughtering;

Section 6(1) of the 2004-Act bars transportation for slaughtering only and not for any other purposes. Sections 6(2) and 6(3) of the 2004-Act are only applicable if section 6(1) of the 2004-Act is applicable;

In case section 6(1) of the 2004-Act is not applicable, then, the vehicle can always be released at any time u/s 451 of the Cr.P.C.;

It is for the Petitioners to satisfy that their vehicles are not being used for carrying agriculture cattle for slaughtering;

The restriction contained under sections 6(2) and 6(3) of the 2004-Act are not unreasonable.

Discussion

6. Article 19(1)(g) of the Constitution guarantees a fundamental right to all citizens to practise any profession, or to carry on any occupation, trade, or business. However, Article 19 of the Constitution permits the State to enact a law imposing reasonable restriction in the interest of general public (public interest).

7. The Petitioners are carrying on the business of transportation. The question is whether sections 6(2) and 6(3) of the 2004-Act impose unreasonable restrictions to carry on the business of transportation or not.

8. Part-IV of the Constitution is titled as "Directive Principles of State Policy". Article 48 of this part is titled as "Organisation of agriculture and animal husbandry". It provides that the State shall attempt to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other mulch and draught cattle.

9. The 2004-Act applies to the agriculture cattle as defined in its schedule. It includes cows of all ages, calves of cows and of she buffaloes, bulls, bullocks, male and female buffaloes. The agriculture cattle as defined in the 2004-Act are within the meaning of Article 48 of the Constitution and the State is required to take steps for prohibiting the slaughter of these animals.

10. As mentioned in the preamble, the 2004-Act has been enacted in public interest and to maintain communal harmony and peace, for prohibition of slaughter of agriculture cattle: it is in pursuance of Article 48 of the Constitution.

11. The 2004-Act seeks to achieve its purpose by sections 4 to 6:

(a) Section 4 is titled as "Prohibition of slaughter of agriculture cattle". It bars the slaughtering of any agriculture cattle;

(b) Section 5 is titled as "Prohibition on possession of beef". It bars possession of meat of any agriculture cattle;

(c) Section 6 (see below)¹ is titled as "Prohibition on transport of agriculture cattle for slaughter"?

Section 6(1) restrains any person from selling, transporting or offering to transport or cause to be transported any agriculture cattle from any place within the state or outside the State for the purpose of its slaughter in contravention of the provisions of the 2004-Act or with the knowledge that it will be or is likely to be, so slaughtered;

Section 6(2) provides seizure of vehicle used in contravention of section 6(1);

Section 6(3) bars the release of the vehicle within six months or before end of the trial whichever is earlier and also refers the vehicle liable for confiscation.

Cases cited by the Petitioners

12. Before considering further, it will be apt to consider the cases cited by the counsel for the Petitioners.

The Chintaman case

13. In the Chintaman case, the provisions of CP & Berar Regulation of Manufacture of Bidis (Agriculture Purpose) Act (64 of 1948) were challenged. Under this enactment, the manufacturing of Bidis was prohibited during the agriculture season. This was done so that there could be adequate supply of labour during the agriculture season.

14. The Supreme Court struck down this provision of the aforesaid statute as it prohibited even the labour to be imported from outside and employing infirm and disabled persons who were not fit for agriculture purpose. The Court also suggested that the purpose of the statute could be achieved by regulating hours of manufacture of Bidis.

15. The case in hand is not similar to the Chintaman case. There is no total prohibition, but, there is an embargo for release of the vehicle for some time.

The Usmanbhai case

16. In the Usmanbhai case, the Municipal Corporation of Ahmedabad had banned slaughtering for seven days. There was no permanent ban; it was only partial. It was upheld by the Supreme Court. The case is similar here. Release of the vehicle is not permanently prohibited but for a limited period only.

The Bajpai case

17. In the Bajpai case, a retired member of the Central Excise Service Tax Appellate Tribunal (the Tribunal) was prohibited from appearing before the Tribunal. In this case, the ban was total and yet the Supreme Court has upheld the same.

18. In our opinion, the cases cited by the Petitioners do not help them.

Section 6(2)--Not unreasonable

19. There is no serious objection to section 6(2) of the 2004-Act. In any case, if a vehicle is being used in contravention of Section 6(1), then the seizure of that vehicle cannot be said as unreasonable. However, the main objection of Petitioners is to section 6(3) of the 2004-Act.

Section 6(3)--Not unreasonable

20. In the present case, the vehicles have not been confiscated, however, the applications of the Petitioners to release the vehicles have been rejected as u/s 6(3) of the 2004-Act as neither the period of six months had expired nor the trial has come to an end.

21. Article 19(6) of the Constitution permits the State to enact a law, imposing reasonable restrictions in public interest. The question is whether the impugned restriction is in public interest or not.

22. Directive principles of the State policy are the goals to be achieved by the State; they are the end. The fundamental rights are the means to achieve them. In interpreting the constitution, a balance between the two is necessary. It is for this reason that the law enacted to give effect to the directive principles of the State policy has been held to be reasonable.

23. Section 11 of the 2004-Act is titled as "Burden of proof on accused". It provides that it is for the accused to prove that the agriculture cattle were not being transported in contravention of provisions of sections 4 to 6 of the 2004-Act.

24. In case, a transporter is able to prima facie satisfy the Magistrate that the agriculture cattle was not being transported for slaughtering, then, section 6(1) will not be attracted and vehicle can be released at any time. In view of this, it cannot be said that it is an unreasonable restriction. In any case, after expiry of six months or after conclusion of trial (whichever is earlier) there is no bar.

25. In our opinion, sections 6(2) and 6(3) of the 2004-Act do not impose unreasonable restrictions and are not violative Article 19(1)(f) of the Constitution.

2nd POINT: NOT INCONSISTENT

26. The counsel for the Petitioners submit that the impugned sub-sections are hit by Article 254 of the Constitution as they are inconsistent with,

The Prevention of Cruelty to Animals Act, 1960 (the 1960-Act), which does not provide any limitation for releasing the vehicle;

Section 451 of the Cr.P.C., which also does not provide any such limitation.

Not Inconsistent with the 1960-Act

27. The counsel for the Petitioners have not been able to point out any provisions in the 1960-Act that provides for release of the vehicles that is transporting agriculture cattle. In absence of any such provision in the 1960-Act, sections 6(2) and 6(3) cannot be held to be inconsistent with the 1960-Act.

Permissible u/s 4(2) Cr.P.C.

28. Section 451 of the Cr.P.C. titled as "Order for custody and disposal of property pending trial in certain cases". It provides for release of the property pending trial.

29. Section 451 of the Cr.P.C. does not provide any embargo of time before considering the application for release of the property or vehicle. While interpreting it, the courts have also held that the question of releasing the vehicles should be considered expeditiously.

30. u/s 6(3) of the 2004-Act, vehicle cannot be released before six months or conclusion of trial (whichever is earlier). The result is that the application for release of vehicle u/s 6(3) cannot be considered expeditiously.

31. It is only for the aforesaid period that section 6(3) of the 2004-Act overrides section 451 of the Cr.P.C.. Though, after this period application for release is to be dealt with in accordance with section 451 of the Cr.P.C.. It is for this reason that the provision is inconsistent with section 451 Cr.P.C.. The question is, is it permissible?

32. Section 4 of the Cr.P.C. is titled as "Trial of offences under the Indian Penal Code and other laws". Sub-section (1) of section 4{4(1)} of the Cr.P.C. provides that all the offences under the IPC shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained in the Cr.P.C..

33. Sub-section (2) of section 4{4(2)} of the Cr.P.C. provides that all the offences under any other law shall also be investigated, inquired into, tried, and otherwise dealt with according to the Cr.P.C., but this is subject to the enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

34. Section 6(1) of the 2004-Act is not an offence under the IPC. Such offences are dealt with u/s 4(2) of the Cr.P.C.. They are to be investigated and tried in accordance with the Cr.P.C. as regulated by the 2004-Act.

35. The 2004-Act has provided a different provision for releasing the vehicle. A vehicle can only be released after expiry of six months or conclusion of trial (whichever is earlier). It is this provision that is applicable and not section 451 Cr.P.C.. This inconsistency is saved by section 4(2) Cr.P.C..

36. In our opinion, the provision is not hit by Article 254 of the Constitution.

3rd POINT: NOT VIOLATIVE OF ARTICLE 301

37. Article 301 of the Constitution of India is titled as "Freedom of trade, commerce and intercourse". It provides that trade, commerce and intercourse throughout the territory of India shall be free.

38. Article 301 of the Constitution bars prohibition but does not prohibit regulation of inter state or intra state trade or movement. This has been succinctly dealt with by DD Basu's Shorter Constitution of India 14th Edition, 2009 at page-1835 as follows:

Regulation" of inter-state or intra-state trade or movement must be distinguished from "prohibition"; the former is valid but the latter cannot be said to be a

reasonable restriction². Thus,

(a) A rule which totally prohibits the movement of the forest produce between specified hours is prohibitory of the right to transport forest product ³.

(b) On the other hand, a Rule which permits such transport, subject to certain specified conditions for preventing public injury or to serve the public good,⁴ e.g. in pursuance of the Directive under Art. 51A(g)⁵ would be a reasonable restriction whether under Art. 19(1)(g) or Art. 304. Thus, the illicit felling of trees may be regulated by requiring that no forest produce should be transported from one place to another without obtaining a permit from a specified officer.⁶

39. In the present case, there isn't total prohibition in carrying out the business. A transporter can always carry on his business but cannot do an illegal act of carrying animals for slaughtering and in case he does so, then his vehicle cannot be released for six months or before conclusion of the trial, whichever is earlier.

40. It is not prohibition, but, is a regulation that is permissible under Article 301. In our opinion, the impugned provisions are not ultra vires Article 301 of the Constitution.

SOME CLARIFICATIONS

41. Section 6(3) of the 2004-Act also provides for confiscation of the vehicles at the end of the trial. Some submissions were raised by the counsel for the Petitioners challenging the validity of this part of section 6(3) and its constitutionality.

42. In the present case, none of the vehicles have been confiscated, it is for this reason that we have not considered its validity. In case any vehicle is confiscated and the provision is challenged, then this question may be decided at that time.

43. In both the cases, a reading of the impugned orders passed by the Magistrate concerned does not indicate that any mind was applied to the question whether prima facie the agriculture cattle were being transported in violation of section 6(1) of the 2004-Act or not. However, we have not considered its validity. It can be challenged in appropriate proceeding under the Cr.P.C..

44. Apart from above, the trial has not concluded but the period of six months has expired. It is always open to the Petitioners to file fresh application before the Court concerned for the release of their vehicles as now it will be dealt with section 451 Cr.P.C.. In case, the applications are filed then the same may be considered under the provisions contained in the Cr.P.C..

CONCLUSIONS

45. Our conclusions are as follows:

(a) Sections 6(2) and 6(3) of the Chhattisgarh Agriculture Cattle Preservation Act, 2004 are applicable only if sub-section 6(1) is applicable. The limitation for not releasing a vehicle within a period of six months or till the conclusion of trial

(whichever is earlier) is attracted only if section 6(1) is applicable. In case, the Magistrate is prima facie of the view that the agriculture cattle were not being transported for slaughtering, then the embargo contained in sections 6(2) and 6(3) are not applicable;

(b) In any case, the limitation for not releasing the vehicle case is not applicable after expiry of six months or conclusion of the trial (whichever is earlier) and in that event, release of the vehicle has to be considered under the provisions of the Cr.P.C..

(c) Sections 6(2) and 6(3) of the Chhattisgarh Agriculture Cattle Preservation Act, 2004 are valid.

In view of our conclusions, the writ petitions are disposed of with the aforesaid observations and the clarification mentioned under the heading "SOME CLARIFICATIONS".

1 Section 6 as amended is as follows:

6. Prohibition on transport of agriculture cattle for slaughter -- (1) No person shall sell, or transport or offer to transport or cause to be transported any agriculture cattle from any place within the state to any place within the State or outside the State, for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered.

(2) Whenever any person transports or causes to be transported in contravention of the provisions of sub-section (1) any agriculture cattle as specified in the Schedule, such vehicle or any conveyance used in transporting such animal alongwith such agriculture cattle shall be liable to be seized by such authority or officer as the State Government may appoint in this behalf.

(3) The vehicle or conveyance so seized under sub-section (2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, which ever is earlier and such vehicle shall also be liable for confiscation at the end of the trial.

2 State of Mysore Vs. H. Sanjeeviah, [(K. Ramanathan Vs. State of Tamil Nadu and Another, State of Tamil Nadu and others Vs. M/s. Sanjeetha Trading Co. and others, -justified by emergency.] 3 State of Mysore Vs. H. Sanjeeviah, K. Ramanathan Vs. State of Tamil Nadu and Another, ; State of Tamil Nadu and others Vs. M/s. Sanjeetha Trading Co. and others,

4 State of Mysore Vs. H. Sanjeeviah, K. Ramanathan Vs. State of Tamil Nadu and Another, ; State of Tamil Nadu and others Vs. M/s. Sanjeetha Trading Co. and others,

5 Aramachine and Lakri Vikreta Sangh, Nagpur Vs. State of Rajasthan and Others,

6 Aramachine and Lakri Vikreta Sangh, Nagpur Vs. State of Rajasthan and Others,